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No. 82-892

# In the Supreme Court of the United States

OCTOBER TERM, 1982

PATRICK W. HANIGAN, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner seeks review[1] of his conviction in the United States District Court for the District of Arizona for violating the Hobbs Act, 18 U.S.C. 1951, by beating, torturing, robbing, and shooting three Mexicans who had entered Arizona from Mexico to work as farm laborers. The Hobbs Act makes it a federal crime to commit a robbery that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce"

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[1]The petition in this case was not timely filed and should be denied on that ground. The court of appeals denied rehearing on September 22, 1982 (see Pet. 3), but the petition was not filed until November 29, 1982. See Sup. Ct. R. 20.1. Contrary to petitioner's apparent belief (see Pet. 4), the order of the court of appeals recalling issuance of its mandate did not extend the time within which to file the petition.

(18 U.S.C. 1951(a)).[2] "Commerce" is defined by statute to include "all commerce between any point in a State * * * and any point outside thereof * * *; and all other commerce over which the United States has jurisdiction" (18 U.S.C. 1951(b)(3)). Petitioner's argument that his robbery did not affect "commerce" has no merit,[3] and there is no reason for further review of this case.

1. The evidence showed that the three victims, citizens and residents of Mexico, crossed the border between Mexico and Arizona to obtain work as agricultural laborers. They had previously crossed the border for the same purpose and had found such employment (Pet. App. B2). The

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[2]18 U.S.C. 1951 provides:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section [commits an offense] * * *.

(b) As used in this section —

* * * * *

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or section 151-188 of Title 45.

[3]We are unable to determine from the petition whether petitioner is attacking the sufficiency of the indictment, as he did in the district court (Pet. App. A), or complaining of the jury instructions (Pet. App. B9) or attacking the sufficiency of the evidence to show a connection between the robbery and "commerce" (Pet. 11, 13).

evidence also showed that the victims would have found farm employment had they not been prevented from reaching their destination by petitioner and his accomplices (Tr. 2038-2046, 2064-2071, 3034).

Petitioner's brother found the three victims on land owned by the Hanigan family and abducted them at gunpoint. Petitioner and his father joined the brother, and over the course of several hours, the three Hanigans brutally tortured the Mexicans and robbed them of their few possessions. The Hanigans then forced the Mexicans to run back across the border to Mexico and shot at them with shotguns. Two of the Mexicans sustained numerous pellet wounds (Pet. App. B 2-3).

Petitioner was tried by a jury in federal court on an indictment charging that at the time of the crime the victims were travelling from Mexico to Elfrieda, Arizona, in search of employment and that the robbery had affected commerce (Pet. App. B5, D1).[4] The jury found petitioner guilty, and he was sentenced to three concurrent terms of three years' imprisonment.[5]

On appeal, petitioner contended that "commerce" under the Hobbs Act does not include the travel of laborers and, alternatively, that the Act does not prohibit interference

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[4]Petitioner was previously charged with and acquitted of various state offenses based upon the same events.

[5]Petitioner has sought certiorari twice before in prior proceedings in this case; both petitions were denied. In the first petition, *Hanigan* v. *United States*, 446 U.S. 953 (1980), he contended that his prior state acquittal barred federal prosecution. In the second, *Hanigan* v. *United States*, 450 U.S. 982 (1981), he argued that he was entitled to appellate review of the sufficiency of the evidence at his first federal trial, which ended in a mistrial when the jury was unable to reach a verdict. Petitioner's brother, indicted by the same federal indictment, was tried before a separate jury and was acquitted.

with the illegal entry of undocumented laborers. The court of appeals held, however, that the definition of "commerce" in the Act is "coextensive with the constitutional definition" (Pet. App. B7) and that the movement of laborers across state or national boundaries is "commerce" in the constitutional sense (*id.* at B8 to B9).[6] The court also observed (*id.* at B10) that nothing in the language or legislative history of the statute suggests that Congress meant to limit the statute to robberies or extortions that affect lawful commerce. Since the movement of alien laborers across national boundaries is within the power of Congress to regulate, the court reasoned that such movement constitutes "commerce over which the United States has jurisdiction" and is accordingly within the reach of the statute (*id.* at B10). Because petitioner's violent actions prevented the victims from entering the United States and obtaining employment, the court held (*ibid.*) that the government had proved "both a direct interference with and a potential threat to interstate commerce".

2. The court of appeals properly rejected petitioner's arguments that the movement of labor across a state line is not "commerce over which the United States has jurisdiction" and that the Hobbs Act does not reach illegal commerce (Pet. App. B5). Relying on this Court's interpretation of the Commerce Clause in *Edwards* v. *California*, 314 U.S. 160, 173-174 (1941), and this Court's recognition that the Hobbs Act "manifest[s] * * * a purpose to use all the constitutional power Congress has to punish interference with interstate commerce" (*Stirone* v. *United States*, 361 U.S. 212, 215 (1960); *United States* v. *Culbert*, 435 U.S. 371, 373 (1978)), the court below correctly held that the movement of laborers across state or national boundaries may constitute "commerce" within the meaning of the

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[6]The court of appeals' opinion is reported at 681 F.2d 1127.

Commerce Clause and the Hobbs Act. See *Service Machine & Shipbuilding Corp.* v. *Edwards*, 617 F.2d 70, 76 (5th Cir. 1980). Petitioner cites no authority to the contrary.[7]

Petitioner maintains (see Pet. 7, 13) that "commerce" was not affected by the robbery because the business of the victims' prospective employer was not harmed. The relevent commerce, however, is the international travel of the victims. As the court of appeals recognized (Pet. Ap. B10), petitioner's robbery and torture of the three Mexicans indubitably interfered with their movement across a national boundary to sell their services as laborers and thus affected commerce.

Petitioner contends (Pet. 9-10) that the power conferred upon Congress to regulate the entry of aliens into the country (Article 1, Section 8, Clause 3) supports his argument that the Commerce Clause does not reach the entry of such persons. However, petitioner cites no authority for the proposition that the powers conferred by the Immigration and Naturalization Clause and the power "[t]o regulate Commerce with foreign Nations * * *" under the Commerce Clause do not overlap.

Petitioner argues (see Pet. 15-16) that application of the Hobbs Act to the "commerce" in this case is an undue expansion of federal jurisdiction. But, as this Court explained in *United States* v. *Culbert, supra*, 435 U.S. at 379-380, when Congress enacted the Hobbs Act it "intended

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[7]The court of appeals was also correct in rejecting petitioner's argument, apparently not pursued here, that "commerce" must be lawful to be within the ambit of the Hobbs Act (Pet. App. B9-10). Nothing in the Hobbs Act states or implies that the statute applies only where the "commerce" affected is lawful or where the articles involved entered the United States legally. See *United States* v. *Blakey*, 607 F.2d 779, 783 (7th Cir. 1979); *United States* v. *Braasch*, 505 F.2d 139 (7th Cir. 1974), cert. denied, 421 U.S. 910 (1975). Cf. *United States* v. *Turkette*, 452 U.S. 576, 587 (1981).

to define as a federal crime conduct that it knew was punishable under state law" and "intended to make criminal all conduct within the reach of the statutory language."[8]

3. The decision below does not conflict with those of other courts of appeals, as petitioner contends (Pet. 6, 15, 18-19). The cases upon which petitioner relies — *United States* v. *Mattson*, 671 F.2d 1020 (7th Cir. 1982), and *United States* v. *Boulahanis*, 677 F.2d 586 (7th Cir. 1982), cert. denied No. 82-263 (Nov. 15, 1982) — did not address the question whether the movement of laborers across state lines may constitute "commerce." *Mattson* held that extortion from a person whose employer was engaged in commerce did not violate the Hobbs Act where the extortion had no effect on the employer's interstate purchases. The victim in *Mattson* was an individual who "had no connection with interstate commerce at all, but whose only connection was with a business which was engaged in interstate commerce" (671 F.2d at 1025). In *Boulahanis*, a Hobbs Act conviction was affirmed and *Mattson* was distinguished because the victim regularly made small purchases from out of state. Both *Mattson* and *Boulahanis* involved acts that had only an indirect effect on commerce (extortion resulting in a

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[8]Petitioner contends (Pet. 16-18) that he was denied due process because his conviction was based upon a "new, expansive interpretation of the Hobbs Act" (Pet. 16) that could not have been foreseen. This argument lacks merit. Petitioner's conduct fell squarely within the plain meaning of the statutory language, and he cites no authority upon which he might have reasonably relied in reaching a contrary conclusion. Moreover, it is absurd to argue that petitioner was relying upon a restrictive interpretation of the statutory language or the Commerce Clause when he beat, tortured, robbed, and shot the victims encountered on his family's land. Petitioner's conduct, which anyone would have known was illegal, is therefore not analogous to that in *Bouie* v. *City of Columbia*, 378 U.S. 347 (1964), upon which he relies (Pet. 17-18). *Bouie* concerned the retroactive application of a new interpretation of a state trespass statute to a sit-in at a racially segregated restaurant.

diminished ability to buy or sell across state lines). The *Mattson* court made clear (671 F.2d at 1023-1024) that it was not overruling its prior decisions upholding application of the Hobbs Act to extortion or robbery directly interfering with the victim's activities in interstate commerce as did the robbery here. See, e.g., United States v. *Staszcuk*, 517 F.2d 53 (7th Cir.) (en banc), cert. denied, 423 U.S. 837 (1975).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
*Solicitor General*

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